



LOS LUNAS POLICE DEPARTMENT

ADMINISTRATION

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ADM.19.01

EFFECTIVE DATE:
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SUBJECT: INTERNAL AFFAIRS

REVIEW DATE:
February 5, 2018

AMENDS/ SUPERSEDES:

NMSA:

NMMLEPSC STANDARDS:
ADM.19.01-ADM.19.09

APPROVED BY CHIEF OF POLICE NAITHAN

G. GURULE

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Signature

I. STATEMENT OF PURPOSE

The Los Lunas Police Department takes all complaints against its members seriously. The public has a right to expect and demand fair and impartial law enforcement services. In providing these services, the Department employee must be free to exercise his/her best judgment and to initiate action in a reasonable, lawful and impartial manner, without fear of reprisal. While the mutual rights of the public and the police officer are normally respected, situations may arise when these rights are reported to be violated. To protect the rights of the public and the Department employee, it is necessary that allegations of misconduct be thoroughly investigated.

The goal of all internal investigations is to ensure Department integrity is maintained through a fair and impartial system. While there are certain situations which require an Internal Affairs investigation, there are others which can be easily and effectively resolved through supervisory investigations.

The Los Lunas Police Department prohibits all forms of retaliation, including discouragement, intimidation, coercion, or adverse action, against any person who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct. Retaliation for reporting misconducts or for not cooperating with an investigation of misconduct shall be grounds for discipline, up to and including termination of employment.

II. DEFINITIONS

- A. **Complaint:** Grievance against a department employee where he/she is alleged to have violated a policy of the Los Lunas Police Department Rules and Regulations, Village of Los Lunas Employee Handbook, City Ordinance, State Statute, or Civil Rights Act.
- B. **Supervisory Investigation:** This category of investigations can be initiated and investigated by any supervisor. These investigations can include, but are not limited to violations of policy or statute. Investigations can be conducted in the absence of a complaint.

- C. **Internal Affairs Investigation:** An investigation conducted at the direction of the Chief of Police, performed in an effort to determine if any of the Department's Rules and Regulations or rules set out in the Village of Los Lunas Personnel Employee Handbook have been violated.
- D. **Preponderance of Evidence:** The standard burden of proof in administrative investigation. (Evidence to show greater than 50% that the allegation occurred). A Preponderance of Evidence has been described as just enough evidence, no matter how slight, to make it more likely than not that the allegation sought to be proved is true or false.
- E. The **outcomes (findings)** per allegation of departmental directive violation and criminal violation will be classified as:
1. **Exonerated**-That the behavior in question was proper in all terms of the requirements of applicable law and departmental directive.
 2. **Not Sustained**- Insufficient evidence either to prove or disprove the allegation(s).
 3. ~~**Sustained**- The allegation is supported by sufficient evidence, and/or acts of misconduct where discovered during the investigation which were not alleged in the complaint.~~
 4. **Unfounded**-The allegation, upon investigation, is determined to be without basis in fact.
 5. **Mediation**- A meeting between the accused officer, the complainant and the officer's supervisor.
 6. **Sustained violation not based on original complaint**- where the investigation determines, by preponderance of the evidence, that misconduct did occur that was not alleged in the original complaint but that was discovered during the misconduct investigation.
 7. **Administratively Closed**- where the policy violations are minor, the allegations are duplicative, or investigation cannot be conducted because of lack of information in the complaint.
- E. Professional Standards Division: This division is responsible for the investigation of and/or to provide review and monitoring of all complaints. The Professional Standards personnel report to the Deputy Chief and have direct access to the Chief of Police. The Patrol Lieutenant or Support Services Lieutenant is designated to assist and serve as an alternate in the event the Professional Standards Lieutenant is unavailable.

III. CITIZEN COMPLAINTS

- A. The receiving supervisor will handle complaints as promptly as possible and notify the Professional Standards Lieutenant of the complaint upon receipt of the complaint.
- B. When a complaint is received, it is the responsibility of the receiving supervisor to determine the merit of the complaint in consultation with the Lieutenant.
- C. Complaining parties wishing to lodge a complaint on an employee should be advised of the procedure for filing the complaint. This information is available in written form.
- D. At their request the complaining party will be given a Complaint Form to complete.
- E. After completing the form, the complainant should be asked to sign it. The signature will be witnessed by the receiving supervisor. If the complainant refuses to sign the complaint it should be noted on the form "Refused to Sign" and initialed by the receiving supervisor.
- F. The complainant will be given a copy of the form and the original shall be maintained by the Department (Professional Standards Lieutenant).
- G. A copy of the complaint will be forwarded from the investigating supervisor to the employees' supervisor after the complaint is received.
- H. Upon receipt of the complaint, the investigating supervisor will notify the involved officer of the complaint in writing. The officer may be requested to submit a memorandum to the investigating supervisor detailing the incident.
- I. Any statements taken by the investigating supervisor should be taped. It is the responsibility of the investigator to transcribe statements as needed.
- J. At the conclusion of the investigation the investigating supervisor should submit a report within 30 days and the report should include the following:
 - 1. Summary of allegation;
 - 2. Statements of parties involved and witnesses;
 - 3. Findings-if specific violation in policy or statute has been violated these will be listed;
 - 4. Corrective Action/Disciplinary Recommendation (if applicable);

5. The audio/ video recorded statement.
 6. Transcription (If necessary)
 7. Any associated reports, activity logs, dispatch records, audio, video recordings or other documents pertaining to the investigation.
- K. The original copy of the complaint and the investigative report will be forwarded to the Division Commander.
- L. The investigating supervisor shall keep the complainant informed concerning the status of the complaint and shall notify the complainant with the results of the investigation.
- M. An Internal Affairs Investigation can be conducted at the discretion of the Chief of Police.
- N. The Professional Standards Lieutenant handles the majority of the above mentioned investigations. In the absence of the Professional Standards Lieutenant, an officer with the rank of Lieutenant or above will handle the investigation.
- O. Time limits may be extended at the discretion of the Chief of Police.

IV. UNSIGNED AND ANONYMOUS COMPLAINTS

Unsigned and anonymous complaints will be investigated if these complaints meet the criteria as set forth in the definition of a complaint.

- A. If a citizen calls the police department or comes to the station to complain on an employee, the complaint shall be documented even if the citizen does not want to complete a Citizen Complaint.
- B. The receiving supervisor will forward the complaint to the Professional Standards Lieutenant.

V. ACTIONS TAKEN ON COMPLAINTS

The Department encourages the resolution of complaints. In order to facilitate this goal, the following methods may be used:

- A. Training
- B. Documented Counseling
- C. Written Reprimand
- D. Suspension
- E. Demotion
- F. Termination

Corrective Action/Disciplinary recommendation will follow Department policy and the investigating supervisor, in consultation with the command staff, shall make a recommendation.

VI. MAINTENANCE/YEARLY SUMMARY

The Professional Standards Lieutenant will maintain all completed citizen complaint investigations and investigative reports. These records will be secured and maintained separate from other department records. These records will be maintained for—the duration of the employee's employment with the department and in compliance with the New Mexico Records Retentions Act.

Prior to destroying the complaint files the Professional Standards Lieutenant will review the complaints and prepare a summary of the complaints for the Chief of Police. This summary can include:

- A. The number of complaints received in a calendar year;
- B. The types of complaints received;
- C. Names of officers involved in the complaints;
- D. The findings of the complaints.

VII. STATEMENT OF EMPLOYEE'S RIGHTS

In the event an employee becomes the subject of a complaint of a serious nature, procedures have been developed to guard an employee's rights. This order addresses an employee's rights when making statements and in disciplinary actions.

Garrity Warning:

- A. You are required to respond to all questions asked of you in this administrative investigation. Further, you are required to assist investigators with any information they should request. If you fail or refuse to honestly answer any and all questions asked, you may be subject to disciplinary action up to and including termination from employment.
- B. In accordance with the United States Supreme Court's decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967); your statement, as well as any information gained through your statement cannot be used against you in any criminal proceeding.
- C. You are further ordered not to discuss this internal investigation with anyone other than your chain of command or attorney, including but not limited to witnesses or prospective witnesses. A violation of this order will be considered an act of insubordination, which could result in disciplinary action against you of up to and including termination from employment.

Investigations and interviews will be conducted in accordance with Chapter 29, Article 14, (NMSA 1978).

VIII. STATEMENTS

In the event an employee is the subject of an investigation which could result in administrative sanctions, the following guidelines will be followed:

- A. Any investigations will follow requirements as set forth in Chapter 29-Article 14, NMSA 1978 Peace Officer's Employer-Employee Relations.
- B. The employee will be notified advising him/her that he/she is under investigation for violation of policy.
- C. The interview may be postponed for a reasonable time from the time the officer is informed of the interview and the general subject matter thereof.
- D. This section shall not apply to questions from a supervisor in the course of performing normal day-to-day supervisory duties or a request for the preparation of detailed reports.

IX. DISCIPLINARY ACTIONS

When an employee is required to appear before a supervisor for disciplinary action the employee shall have the following rights:

- A. In all cases of disciplinary action it shall be the responsibility of the ranking supervisor administering the disciplinary action to refer the employee to the Grievance procedures and the employee handbook for appeal procedures.

X. CONSTITUTIONAL RIGHTS

When an employee is the subject of a complaint which is criminal in nature, the employee shall be afforded all rights entitled by the Constitution.

The Los Lunas Police Department takes all complaints against its members seriously. The public has a right to expect and demand fair and impartial law enforcement services. To protect the rights of the public and the Department employee, it is necessary that allegations of misconduct be thoroughly investigated.

The goal of all investigations is to ensure Department integrity is maintained through a fair and impartial system. This policy applies equally to sworn and non-sworn personnel.

XI. RESPONSIBILITY

A. Professional Standards Lieutenant

1. Except for the Chief of Police or Deputy Chief the authority and responsibility to determine the disposition of an investigation rests with the investigating supervisor.
2. The Lieutenant or supervisor handling the complaint is responsible for investigation, and/or to provide review and monitoring, of all complaints received by the office, no matter in what form the complaint is received. If the complaint is limited to non-serious allegations, it may be forwarded for supervisory investigation.
3. The Lieutenant or supervisor handling the complaint is responsible for notifying the supervisors of an accused officer whenever a citizen has filed a complaint against the officer, except in the unusual situation when it is determined that it is necessary for the investigation that the supervisor not be informed as determined by the Chief of Police.
4. Once a complaint is resolved and approved, the Chief of Police or investigating supervisor will inform the complainant of the resolution.
5. The Professional Standards Lieutenant is responsible for the maintenance of a complaint log and maintenance of a central file for complaint investigations in a secure area.

B. Supervisors

1. The primary responsibility for maintaining and reinforcing employee conformity with the standards of conduct shall be with department supervisors.
2. Supervisors shall familiarize themselves with the employees within their span of control. They should closely observe their general conduct and appearance on a daily basis.
3. Supervisors should remain alert for indications of behavioral problems or changes which may affect an employee's normal job performance. When a supervisor perceives an employee may be having or causing problems the supervisor should assess the situation and take the most appropriate action.

4. Supervisors may recommend additional training to refresh and reinforce an employee's skills.
5. Informal intervention may be used by supervisors as follows:
 - a. To determine the extent of any personal or job problems which may be affecting performance, and to offer assistance and guidance.
 - b. To discuss minor and infrequent rule violations and to discuss the substance and importance of the rules with the employee
6. Supervisors shall document all counseling or additional training used to modify an employee's behavior.
7. The supervisor on duty at the time of the initial complaint from a citizen is responsible for attempting to resolve the area of conflict to the satisfaction of the complainant, if possible. If the area of conflict or misunderstanding cannot be resolved at the time of the complaint, it shall be incumbent upon the supervisor to obtain sufficient information necessary to initiate an investigation.
8. All complaints shall be forwarded directly to the Office of Professional Standards who will notify the Division Commander and the Chief of Police. If the complaint has been resolved by the supervisor at the time of the complaint, it will be forwarded to the Office of Professional Standards on memo form indicating it has been resolved. The Office of Professional Standards will follow-up to ensure the complaint has been satisfactorily resolved.

C. Employees

1. Any employee who receives a complaint shall immediately notify an on-duty supervisor who is responsible for receiving the initial complaint.
2. All Los Lunas Police Department employees are required to report misconduct by other employees through the reporting employee's chain of command or directly to the Office of Professional Standards if conflict exists between the employee and immediate supervisor.
3. Employees who have reason to believe they have contributed to a situation that may result in a citizen's complaint shall make a reasonable attempt to resolve the area of misunderstanding at the time of occurrence. Whether or not

the employee is able to resolve the complaint, it will be the employee's responsibility to report the details of the incident to his/her supervisor, who may then require the officer to document the incident.

XII. COMPLAINT PROCEDURE

A. Initiation

1. Any person may file a complaint with the department if they feel they have been stopped, searched or treated unfairly and without legally sufficient cause, to include racial, ethnic, or gender-based profiling. No person shall be discouraged from filing a complaint, or discriminated against because they have filed such a complaint.
2. Complaints may be given in person, via mail, telephone, facsimile or e-mail. A complainant will be allowed to file an anonymous, verbal or written complaint. The department will also accept and investigate complaints filed by individuals other than the alleged victim of misconduct (third-party complaints).
- ~~3.~~ All complaints shall be documented.
4. All complaints shall be forwarded directly to the Office of Professional Standards who will notify the Division Commander and the Chief of Police. If the complaint has been resolved by the supervisor at the time of the complaint, it will be forwarded to the Office of Professional Standards on the appropriate form indicating it has been resolved. The Office of Professional Standards will follow-up to ensure the complaint has been satisfactorily resolved.
5. Supervisory investigations may be conducted by a Sergeant within an employee's chain of command. These may be authorized if, after preliminary review, the Professional Standards Office determines the complaint is minor in nature (i.e., officers unsafe or illegal driving, conducting him/herself in a rude manner or abuse of scheduled meal breaks). Whenever such a referral is made, the Office of Professional Standards shall log this referral and once the investigation is completed and approved, the complainant shall receive a written response from the supervisor conducting the investigation.

C. Conducting the Investigation Regardless of the nature or the source, all complaints are investigated following the same procedure.

1. A thorough investigation shall be conducted on every complaint against the department or any of its personnel.
2. When possible, the investigation shall include statements taken from all available complainants, witnesses and employees, including the involved employee(s). There will be no automatic preference for an officer's statement over a non-officer's statement, nor will LLPD disregard a witness statement merely because the witness has some connection to the complainant or because of any criminal history.
3. If complainants or witnesses are reluctant to come to the police department, or are unavailable to be interviewed during business hours, they may be interviewed at alternate sites, including at residences or places of business, and during reasonable weekend or after- business hours. All such interviews will be arranged and conducted so as not to unnecessarily embarrass persons interviewed or result in unnecessary disclosure of confidential information to others, such as employers, co workers, clients, customers, family, friends, or neighbors. The investigator will also provide reasonable notice before all complainants and citizen witness interviews.
4. If possible, interviews of complainants, involved employees and witnesses will be recorded using audio and/ or video recording equipment. These recordings will be kept as a permanent part of the investigative file. If a complainant or witness refuses to be tape recorded, the investigating officer will accept a written narrative of the statement and request that it be signed by the complainant or witness.
5. Group interviews will not be conducted and no written statement or 'special report' will be accepted in lieu of an interview. The investigating officer has the authority to question all involved persons and to challenge their version of the facts.
6. In order to interview all parties involved effectively, the investigating officer will review the complaint histories and have available for review the following additional information for: officer activity history, performance evaluations, assignment history, training/qualification records, and criminal history, etc.
7. All employees are obligated to appear for interviews and to answer questions. Failure to do so will lead to discipline up to, and including, termination. Employees are compelled to

answer questions during an internal investigation, however are protected by Miranda in a criminal investigation. Truthfulness and candor are required during these interviews. Employees who are the subject of an IA investigation will be informed of their rights and obligations under *Garrity v. New Jersey*, 385 U.S. 493 (1967), and applicable laws. Investigations and interviews will be conducted in accordance with Chapter 29, Article 14, (NMSA 1978).

8. Supervisors on the scene of incidents that result in an investigation will also be interviewed. Supervisors are required to detail their handling of the situation during and after the alleged incident and their observations of the complainant (if any) and officer(s).
9. The investigating officer will canvass the scene of an incident for witnesses as soon as possible after receiving a complaint of misconduct or any other referral. Where possible, a canvass will be completed at the same time of day and/or day of the week on which the incident was alleged to have occurred.
10. The investigating officer will collect all appropriate evidence (except that which cannot be obtained from an uncooperative complainant or other witness) to document each incident of potential misconduct, or any injury of a complainant, including but not limited to photographs of injuries and medical records (by requesting a medical record release and/or the assistance of the injured person to obtain the medical records.)
11. The investigating officer will assess the propriety of all officer conduct during an incident that is investigated. If, during the course of an investigation, there is reason to believe that misconduct other than that alleged by a complainant (or indicated by a triggering report) has occurred, the conduct will be investigated and findings with respect to such misconduct will be made.
12. All complaints will be investigated in a timely manner. Under normal conditions, the investigation will be completed within 30 days of receipt, except in the case of an especially complex or time-consuming investigation, where the particulars are explained in detail.

D. Examinations

1. As deemed appropriate by the Chief of Police and after consultation with the Office of Professional Standards, the employee may be requested to submit to further examination.

2. These may include a medical examination, the use of the employee in either a line-up or photo array, the submission to a polygraph or the submission of financial disclosure statements.
3. Any examinations of this nature are utilized only after all other alternatives have been exercised.

E. Closing the Investigation

1. The investigating officer will not close any investigation without rendering a disposition as noted under Definitions. The investigating officer will investigate such complaints to the fullest extent possible to reasonably determine whether the complaint can be corroborated.
2. There is no automatic preference of an officer's statement over a complainant's Statement. In making credibility determinations, the investigating officer should consider the officer's history (including those with dispositions other than 'sustained'), disciplinary records, and the complainant's criminal history for crimes involving untruthfulness. Any credibility determinations should be explained fully in writing.
3. At the conclusion of any investigation, the investigating officer will issue a report describing the alleged misconduct, other misconduct identified during the course of the investigation, a summary of all evidence gathered during the investigation (including an explanation for any absence of evidence), documentation of all credibility determinations, the accused employee's complaint history, the findings with respect to all potential misconduct, and the analysis supporting the findings along with the disposition.
4. At the completion of any Supervisory investigation, the original copy of the complaint and the final investigative report will be forwarded to the Professional Standards Office for review. This step ensures that all investigations are completed in a consistent manner. If the Professional Standards Office determines any changes are necessary, it will be returned to the investigating supervisor for amendments. Once the changes are made, it will be forwarded back to the Professional Standards Office.
5. If no changes are required, the report will then be forwarded to the Chief of Police.

6. Those investigations which are Administrative in nature will be forwarded to the Chief of Police through the appropriate Division Commander, who will evaluate the investigation, recommend additional investigative steps, or approve the investigation.
7. If the Chief, or any senior staff with whom he consults, do not agree with the disposition, they will not attempt to influence the findings of the investigator, but will detail his or her rationale, in writing, and the Chief will render express findings and a final disposition.
8. Upon completion of any recommended discipline, the report and documentation of discipline will be forwarded back to the Office of Professional Standards for filing.
 - a. At the conclusion of an investigation, and after the disposition has been made, appropriate discipline will be recommended using the department Discipline policy.
 - b. In deciding the appropriate discipline for an employee who is the subject of a 'sustained' disposition, the need for non-punitive steps will be evaluated. These may include, but not be limited to, remedial training, assignment to a field training officer, transfer or reassignment.

XIV. INVESTIGATIONS BY OTHER AGENCIES

- A. All Department personnel, upon becoming aware that they or another employee are the subject of or witness in an investigation by an outside law enforcement agency, will notify their immediate supervisor before making any statements to representatives of the outside agency as soon as possible.
- B. This procedure will ensure that all personnel are fully informed of their applicable legal rights, which may include, but not be limited to:
 1. Talking with an attorney of their choice, if personnel are the subject of a criminal investigation.
 2. Being fully advised of their rights.
 3. Having a tape recorder present during the interview.
- C. This requirement may be waived if the officer involved shooting protocol is invoked.